

IN THE COURT OF APPEALS OF THE STATE OF OREGON

JOSEPH BOVA,  
Plaintiff-Respondent,

RECEIVED

JUL 19 2010

v.

BALL JANIK LLP

CITY OF MEDFORD, an incorporated Subdivision of the State of Oregon, and  
MICHAEL DYAL, City Manager of the City of Medford, as an individual,  
and in his official capacity,  
Defendants-Appellants.

Jackson County Circuit Court No.081663E7

Court of Appeals No. A144254

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**AFFIDAVIT OF STEPHEN L. BRISCHETTO IN SUPPORT OF  
RESPONSE TO TWO GROUPS MOTIONS**

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Appeal from the Limited Judgment entered on December 7, 2009  
Jackson County Circuit Court  
of the State of Oregon  
The Honorable Mark Schiveley, Circuit Court Judge

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Mr. Stephen L. Brischetto OSB #78156  
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Portland, OR 97205  
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Of Attorneys for Plaintiff-Respondent

*Continued on next page*

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Of Attorneys for Plaintiff-Respondent

LAW OFFICE OF ROBERT E. FRANZ, JR.  
Robert E. Franz, Jr. OSB #73091  
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Jerome P. Larkin OSB #83269  
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Springfield, OR 97477  
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Of Attorneys for Defendants-Appellants

STATE OF OREGON )  
 ) ss.  
COUNTY OF MULTNOMAH )

I, Stephen L. Brischetto, being first duly sworn, do hereby depose and say:

1. I am attorney for the plaintiff and class counsel in the above-captioned case.

2. Attached to this Affidavit are the following documents submitted in support of plaintiffs' opposition to the motion of two groups to participate in the case:

A. A copy of a letter produced by the City in discovery in this case;

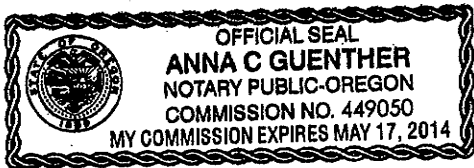
B. A copy of a resolution apparently adopted by the City Council of Medford and also a document produced in discovery in this case;

C. A copy of an affidavit of Robert E. Franz, Jr. filed in the Circuit Court in this case.



Stephen L. Brischetto, OSB # 78156  
621 SW Morrison St., Ste 1025  
Portland OR 97205  
Tel: (503) 223-5814  
Attorney for Plaintiffs-Respondents

SUBSCRIBED AND SWORN to before me this 15<sup>th</sup> day of July, 2010.



Notary Public for Oregon  
My Commission Expires: 5-17-2014

**Douglas G. Detling**  
2473 Corona Avenue, Medford, OR 97504

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May 15, 2010

Mr. John Hutt  
City Attorney  
City of Medford  
411 W. 8<sup>th</sup> St.  
Medford, OR 97501

Dear John:

The management employees of the City of Medford, for the most part, are members of a class in the *Bova v. City of Medford* case. The management group is covered by health insurance offered by the Oregon Teamsters Employers Trust, which plan offers retirees the ability to elect COBRA coverage for 18 months.

The injunction signed in this matter (temporarily stayed while on appeal) would, if made permanent, require the City to enroll the management group, among others, in a health insurance plan that offers retiree coverage until a retiree becomes age 65.

Over the last several weeks, more than 90 percent of the management group, have signed a petition stating they are aware of the current OTET insurance coverage and limitations, wish the status quo to remain in effect, and desire that the injunction be ended.

Thus far, our interests in this case have not been heard or represented by the attorney who filed the action involving the so-called "class" that includes the management group. We believe he is pursuing a remedy that will financially harm all members of this class, as well as the taxpayers of the City of Medford, in the form of hundreds of thousands of dollars in additional premiums for health insurance.

We understand that neither your office nor the attorney representing the City's liability carrier can provide legal assistance to the management group in this matter. We would like to ask the City Council on May 20 to provide financial assistance allowing us to hire an independent attorney who can do so. We believe this would be in the best long-term financial interests of the City. I am prepared to speak to the Council on this subject at either the noon or evening session.

Sincerely,



Douglas G. Detling

002053

EXHIBIT A P 1 OF 1  
AFFIDAVIT OF S. BRISCHETTO

RESOLUTION NO. 2010-117

A RESOLUTION authorizing financial contribution not to exceed \$20,000 to pay attorney fees for City employees to appear in opposition to the plaintiff's requested relief in the case of *Bova v. City of Medford*, Jackson County Circuit Court Case Number 08-1663-E7, and appeal therein.

WHEREAS, Joseph Bova has sued the City alleging that the City's current health care coverage with Oregon Teamsters Employers Trust (OTET) violates ORS 243.303; and

WHEREAS, Jackson County Circuit Court Judge Mark Schively has certified a class which includes management group employees and teamster employees; and

WHEREAS, Judge Schively has entered a judgment for an injunction that would require the City to provide coverage different from the current OTET coverage; and

WHEREAS, the City has opposed the suit and the injunctive relief; the injunction has been stayed pending appeal; and

WHEREAS, employees in the class have approached the City Council explaining that their interests are not being represented by the attorney for the class, and that they wish to maintain the status quo of health care benefits coverage with OTET, and they have requested that the City Council authorize financial assistance to those employees to retain independent counsel to represent their interests; and

WHEREAS, it would be a hardship on those employees to finance legal opposition to the *Bova* lawsuit; and

WHEREAS, success by the employees in obtaining legal relief to maintain the status quo would be a benefit to the City in that suit; now, therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MEDFORD, OREGON, that financial assistance in an amount not to exceed \$20,000 of attorney fees and costs is authorized for these employees to retain an independent attorney to represent their interests in opposition to the relief sought in the *Bova* case. The attorney bill shall be reviewed by the City Attorney and Finance Director prior to payment being issued.

PASSED by the Council and signed by me in authentication of its passage this 20 day of May, 2010.

ATTEST: Glenda Owens  
City Recorder

Quint White  
Mayor

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IN THE CIRCUIT COURT FOR THE STATE OF OREGON  
FOR THE COUNTY OF JACKSON

Joseph Bova, )  
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Plaintiff, )  
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v. )  
 )  
City of Medford, an incorporated )  
Subdivision of the State of Oregon, and )  
Michael Dyal, City Manager )  
of the City of Medford, as an Individual, and )  
in his official capacity, )  
 )  
Defendants. )

Case No. 08-1663E7

**AFFIDAVIT**

of Robert E. Franz, Jr.  
in Support of Reply to  
Plaintiff's Objection to  
Defendants' Submission in  
Opposition to All Plaintiff's  
Motions Concerning Notice  
to Class

State of Oregon )  
 ) ss.  
County of Lane )

I, Robert E. Franz, Jr., being first duly sworn depose and say as follows:  
I am over the age of 18, and I make this affidavit based on personal  
knowledge of the facts contained herein.

1 I am one of the attorneys representing the defendants in the above-  
2 entitled matter.

3 The defendants in this case are the City of Medford and Mike Dyal. In  
4 addition to Mike Dyal, I also represent Doug Detling and Robert Calkins.  
5 Robert Calkins is the Risk Manager and an insurance expert employed by the  
6 City of Medford. Doug Detling is the Personnel Director for the City of  
7 Medford. I represent these individuals because they are part of the  
8 management team that made various decisions in this case.

9 Mike Dyal, Doug Detling, and Robert Calkins are also members of the  
10 Class in this lawsuit because they are management employees. Throughout  
11 this litigation, and at all depositions, I have openly represented these  
12 individuals. There has never been one complaint or contention that I cannot  
13 represent these individuals or communicate with these individuals on the issues  
14 related to this case.

15 Throughout this litigation, I have made it clear that my attorney-client  
16 privilege and my dealings with these three individuals are separate from the  
17 fact that they are members of the Class. They have been instructed that any  
18 objections or concerns they have as Class Members are to be handled by them,  
19 without my advice, and if need be, they were to consult their own attorney.

20 The management employees as a group got together, without any  
21 communication from me, and without any advice or participation by me, and  
22 organized themselves in order to protect their own interest. Last month, I  
23 became aware of a petition signed by several members of the management  
24 employees. I obtained a copy of that petition, and forwarded it to the Court. I  
25 did not draft the petition; I did not instruct anyone to draft the petition; and, I  
26 did not participate in getting signatures on the petition. Simply stated, I had no  
27 involvement whatsoever with the petition.

1 It is my understanding that last month the management group contacted  
2 Lisa Umscheid, an attorney in Portland, to represent them in this litigation, and  
3 to protect their interest. The "Plaintiff's Proposed Notice to Class" provided  
4 that each class member could "seek the advice and guidance of your own  
5 attorney if you desire concerning this case." Each Class Member has the right  
6 to have his or her own attorney. Each Class Member has the right to assert the  
7 attorney-client privilege with his or her own attorney. The attorney for each  
8 Class Member has the right to consult with me, the plaintiff's attorney, or  
9 anyone else she desires to consult.

10 I first became aware that Lisa Umscheid had agreed to represent several  
11 management people when she contacted me by telephone last month.  
12 Thereafter, Lisa Umscheid requested that I meet with her clients.

13 On June 9, 2010, Ms. Umscheid sent an email to Mr. Fisher. A copy of  
14 that email is attached hereto as Exhibit A. In the email Ms. Umscheid  
15 confirmed that she was the attorney of numerous management employees of  
16 the City. She requested to be copied on all correspondence and pleadings. She  
17 also advised Mr. Fisher that she wanted me to meet with her clients.

18 On June 10, 2010, I sent an email to Mr. Fisher and Mr. Brischetto.  
19 Attached as Exhibit B is a copy of the email. In my email, I advised Mr. Fisher  
20 and Mr. Brischetto of the situation, and requested that they let me know if they  
21 were objecting to me meeting with the clients of Ms. Umscheid. They never  
22 objected.

23 The plaintiff is now contending that somehow the members of the  
24 Management Class cannot obtain their own attorney to protect their interest. If  
25 this is the case, then why did the Court agree to a Notice to the Class that they  
26 could obtain their own attorney and seek guidance. In addition, the attorney  
27 representing the members of the Class has the authority and right to ask anyone  
28 she desires to meet with her clients. Meeting with Ms. Umscheid's clients in

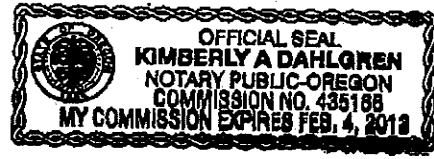
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her presence and at her request does not violate any provision of the Notice to Class and is ethically allowable.

*RE*

Robert E. Franz, Jr.

SUBSCRIBED and SWORN to before me this 16<sup>th</sup> day of June, 2010.



*Kimberly A. Dahlgren*  
Notary Public for Oregon  
My Commission Expires: 02/04/2013

**CERTIFICATE OF SERVICE**

I hereby certify that on July 15, 2010 I filed with the Oregon Court of Appeals an original and 1 copy, and served 1 copy of the foregoing **AFFIDAVIT OF STEPHEN L. BRISCHETTO IN SUPPORT OF REPONSE TO TWO GROUPS**

**MOTIONS** on:

Robert E. Franz, Jr.  
LAW OFFICE OF ROBERT E. FRANZ, JR.  
PO BOX 62  
Springfield OR 97477

Of Attorneys for Defendant

- HAND DELIVERY
- U.S. MAIL
- FAX
- E-MAIL
- ECF

George P. Fisher  
Attorney at Law  
3635 S.W. Dosch Road  
Portland OR 97239

Of Attorneys for Plaintiffs-Respondents

- HAND DELIVERY
- U.S. MAIL
- FAX
- E-MAIL
- ECF

✓ Lisa M. Umscheid  
Ball Janik  
101 SW Main St, Ste 1100  
Portland OR 97204


- HAND DELIVERY
- U.S. MAIL

FAX  
 E-MAIL  
 ECF

Of Attorneys for Interested Persons and Group of Respondent Class Members

by delivering this date to said attorney(s) a true copy thereof as stated above. I further certify that said documents were contained in sealed envelopes, addressed as above stated, to the last-known addresses of said attorney(s). Documents delivered by mail were deposited in the post office at Portland, Oregon with postage thereon prepaid.

DATED: July 15, 2010.



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Stephen L. Brischetto, OSB 78156  
Attorney for Plaintiff  
(503) 223-5814